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DEUTSCHE LUFTHANSA AKTIENGESELLSCHAFT,
7 doing business as "LUFTHANSA GERMAN AIRLINES"

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 SEBASTIAN POGGEL,
12 Plaintiff,

13 vs.

14 LUFTHANSA GERMAN AIRLINES
and EXPEDIA, INC. dba
15 EXPEDIA.COM,
16 Defendants.

Case No.: CV12-4794 OW (JEMx)

**ANSWER AND AFFIRMATIVE
DEFENSES OF DEUTSCHE
LUFTHANSA
AKTIENGESELLSCHAFT**

17
18 Defendant Deutsche Lufthansa Aktiengesellschaft, doing business as
19 "Lufthansa German Airlines" (hereinafter "Lufthansa"), by and through its
20 attorneys of record, Condon & Forsyth LLP, hereby answers plaintiff's Complaint
21 as follows:

22 1. Lufthansa is without knowledge or information sufficient to form a
23 belief as to the truth of the allegations in paragraph 1 of the Complaint and, on this
24 basis, denies said allegations.

25 2. Lufthansa denies the allegations in paragraph 2 of the Complaint,
26 except that Lufthansa admits that it is a foreign corporation duly organized and
27 existing under the laws of the Federal Republic of Germany with its principal place
28 of business in Germany.

1 3. Lufthansa denies the allegations in paragraphs 3 and 4 of the
2 Complaint.

3 4. Lufthansa is without knowledge or information sufficient to form a
4 belief as to the truth of the allegations in paragraphs 5 and 6 of the Complaint and,
5 on this basis, denies said allegations.

6 5. The statements contained in paragraph 7, 8, 9, 10 and 11 of the
7 Complaint do not appear to contain any factual allegations against Lufthansa. To
8 the extent that paragraphs 7, 8, 9, 10 and 11 can be construed to make any factual
9 allegations against Lufthansa, Lufthansa denies those allegations.

10 11 **FIRST AFFIRMATIVE DEFENSE**

12 6. Lufthansa's liability, if any, with respect to plaintiff's alleged
13 damages is further limited or excluded in accordance with its conditions of
14 carriage, conditions of contract and tariffs.

15 16 **SECOND AFFIRMATIVE DEFENSE**

17 7. Plaintiff's alleged damages are limited, excluded and/or preempted by
18 federal law, including the Federal Aviation Act of 1958, as amended (Pub. L. No.
19 5-726, 72 Stat. 731, formerly codified at 49 U.S.C. § 1301 *et seq.*), now re-codified
20 and incorporated into 49 U.S.C. § 40101 *et seq.*, and the provisions of the
21 corresponding regulations promulgated by the Federal Aviation Administration,
22 including but not limited to 14 C.F.R. §§ 91.11; 121.580; 135.120.

23 24 **THIRD AFFIRMATIVE DEFENSE**

25 8. Plaintiff's alleged damages are limited, excluded and/or preempted by
26 federal law, including the Airline Deregulation Act of 1978, Pub. L. No. 95-504,
27 92 Stat. 1705 (codified as amended at 49 U.S.C. §§ 40101-44310 (1994)). *See*
28 *Rowe v. New Hampshire Motor Transport Association*, 552 U.S. 364, 128 S. Ct.

1 989, 169 L. Ed. 3d 933 (2008); *Air Transport Association of America v. Cuomo*,
2 520 F.3d 218 (2d Cir. 2008).

3
4 **FOURTH AFFIRMATIVE DEFENSE**

5 9. All claims of plaintiff relating to rates, routes and/or services provided
6 by Lufthansa are expressly preempted by 49 U.S.C. § 41713.

7
8 **FIFTH AFFIRMATIVE DEFENSE**

9 10. The Complaint is barred on the grounds that it fails to state a claim
10 upon which relief can be granted.

11
12 **SIXTH AFFIRMATIVE DEFENSE**

13 11. The incident alleged in the Complaint, and the damages plaintiff
14 alleges he sustained as a result of the incident, were due to the negligence or other
15 wrongful acts or omissions of persons or entities other than Lufthansa; however, in
16 the event that a finding is made that negligence exists on the part of Lufthansa,
17 which proximately contributed to the damages alleged in the Complaint,
18 Lufthansa's liability, if any, should be reduced by an amount proportionate to the
19 amount by which the comparative negligence of such other persons or entities
20 contributed to the happening of the alleged incident and the damages upon which
21 plaintiff seeks recovery.

22
23 **SEVENTH AFFIRMATIVE DEFENSE**

24 12. The incident alleged in the Complaint, and the damages plaintiff
25 alleges he sustained as a result of the incident, were due to the negligence or other
26 wrongful acts or omissions of persons or entities other than Lufthansa; however, in
27 the event that a finding is made that liability exists on the part of Lufthansa,
28 Lufthansa is entitled to indemnity and/or contribution from such persons or entities

1 in direct proportion to their respective fault.

2
3 **EIGHTH AFFIRMATIVE DEFENSE**

4 13. The incident alleged in the Complaint, and the damages plaintiff
5 alleges he sustained as a result of the incident, were caused by intervening and
6 superseding causes and were not caused by Lufthansa.

7
8 **NINTH AFFIRMATIVE DEFENSE**

9 14. Plaintiff's alleged damages, if any, should be barred or limited as a
10 result of the failure of plaintiff to take reasonable steps to mitigate his damages.

11
12 **TENTH AFFIRMATIVE DEFENSE**

13 15. The incident alleged in the Complaint, and the damages plaintiff
14 alleges he sustained as a result of the incident, if occasioned by fault, are
15 attributable to the conduct of third persons or entities that Lufthansa had no control
16 over at any time relevant hereto.

17
18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 16. Venue is improper in the state of California under the doctrine of
20 *forum non conveniens*.

21
22 **TWELTH AFFIRMATIVE DEFENSE**

23 17. The incident alleged in the Complaint, and the injuries and damages
24 plaintiff alleges he sustained, were not proximately caused by an act or omission
25 on the part of Lufthansa.

26
27 **THIRTEENTH AFFIRMATIVE DEFENSE**

28 18. The complaint fails to state facts sufficient to state a cause of action

1 against Lufthansa upon which relief can be granted.
2

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

4 19. Plaintiff's complaint is barred by the equitable doctrine of unclean
5 hands.
6

7 **FIFTEENTH AFFIRMATIVE DEFENSE**

8 20. Plaintiff's complaint is barred on the grounds that Lufthansa does not
9 have money that in equity and good conscience belongs to plaintiff.
10

11 **SIXTEENTH AFFIRMATIVE DEFENSE**

12 21. Plaintiff's complaint is barred on the grounds that the contract as
13 written did not express the terms of the actual agreement between the parties.
14

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 22. Plaintiff's complaint is barred on the grounds that Lufthansa's consent
17 to the contract was not real or free because it was given or obtained through
18 mistake.
19

20 **EIGHTEENTH AFFIRMATIVE DEFENSE**

21 23. Plaintiff's breach of contract claim is barred on the grounds that there
22 was a mistake of fact with respect to the price of the airline passenger tickets
23 purchased and plaintiff attempted to unfairly take advantage of that fact.
24

25 **NINETEENTH AFFIRMATIVE DEFENSE**

26 24. By conduct, representations and omissions, plaintiff is equitably
27 estopped to assert any claim for relief against this defendant respecting the matters
28 which are the subject of the complaint.

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TWENTIETH AFFIRMATIVE DEFENSE

25. Plaintiff's claim is barred on the grounds that he will be unjustly enriched if he prevails on his claim because he attempted to purchase two (2) first class round-trip passenger tickets to Cape Town, South Africa, for approximately \$11.00 per ticket, while these first class tickets normally sell for and are valued at approximately \$10,000 per ticket.

TWENTY-FIRST AFFIRMATIVE DEFENSE

26. Plaintiff's claim is barred on the grounds that this defendant rescinded the contract, if any, on or about March 23, 2012.

TWENTY-SECOND AFFIRMATIVE DEFENSE

27. No relief may be obtained under the complaint by reason of plaintiff's failure to do equity in the matters alleged in the complaint.

WHEREFORE, defendant Deutsche Lufthansa Aktiengesellschaft respectfully requests that plaintiff take nothing by this action against Deutsche Lufthansa Aktiengesellschaft, that the action against Deutsche Lufthansa Aktiengesellschaft be dismissed with prejudice and that the Court grant to Deutsche Lufthansa Aktiengesellschaft costs and other relief as it deems just and proper.

Dated: June 8, 2012

CONDON & FORSYTH LLP

By: /s/ Scott D. Cunningham
SCOTT D. CUNNINGHAM
IVY L. NOWINSKI
Attorneys for Defendant
DEUTSCHE LUFTHANSA
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